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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEE HYUN SONG,

Defendant and Appellant.

G039167

(Super. Ct. No. 06NF1650)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed October 24, 2008, be modified in the following particulars:

1. On page 17, delete last full paragraph, and replace with the following paragraph: “Here, the evidence Song relies on to support her contention the trial court should have instructed the jury on voluntary manslaughter is Verdecia’s testimony he remembered reading and telling another officer that Song and Kim argued about returning to Korea before the stabbing and her own testimony Kim spun her around and hugged her. In keeping with her defense of accident, Song insisted they did not argue about returning to Korea. But assuming they did argue about returning to Korea, and crediting her testimony Kim spun her around and hugged her, this testimony does not provide substantial evidence of provocation to support a voluntary manslaughter instruction. ““A provocation of slight and trifling character, such as words of reproach, however grievous they may be, or gestures, or an assault, or even a blow, is not recognized as sufficient to arouse, in a reasonable man, such passion as reduces an unlawful killing with a deadly weapon to manslaughter.”” [Citation.]” (*Najera, supra*,

138 Cal.App.4th at p. 226.) Because we conclude there was insufficient evidence to support a voluntary manslaughter instruction, we need not address Song's claim she was prejudiced by the lack of such instruction. Therefore, the trial court properly refused Song's request to instruct the jury on voluntary manslaughter."

The petition for rehearing is DENIED. This modification does not change the judgment.

O'LEARY, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.